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15 Attorneys for Plaintiff ANITA B. CARR

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 AT SAN FRANCISCO  
16

17 ANITA B. CARR,  
18  
19 Plaintiff.

20 v.

21 LIBERTY LIFE ASSURANCE  
22 COMPANY, a Massachusetts  
23 Corporation, and PROVIDIAN  
24 BANCORP SERVICES, a domestic  
25 corporation, and PROVIDIAN  
26 FINANCIAL HEALTH PLAN, an  
27 employee benefits plan,

28 Defendants.

NO.

PLAINTIFF'S FIRST AMENDED  
COMPLAINT

28 PLAINTIFF'S FIRST  
AMENDED COMPLAINT - 1

**KRAFCHICK LAW FIRM**  
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The Plaintiff, by her attorneys of the Krafchick Law Firm, alleges as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Anita B. Carr (Plaintiff Carr) was a resident of Alameda County, State of California, at all times relevant to this cause of action.
2. Defendant Liberty Life Assurance Company of Boston (Defendant Liberty) is a Massachusetts Corporation doing business in the State of California.
3. Defendant Providian Bancorp Services (Defendant Providian) is the ERISA Plan Administrator, based in San Francisco, State of California.
4. Defendant Providian Financial Health and Welfare Plan (Defendant Plan) is believed to be an employee benefits plan under ERISA 29 U.S.C. § 1001 *et seq.* providing, *inter alia*, long-term disability benefits for Providian employees.
5. The matter in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00).
6. Acts complained of and/or contracts made and/or performed as described below occurred within the Northern District of the State of California as well as in other jurisdictions.

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3 7. This claim is governed by ERISA 29 U.S.C. § 1001 *et seq.* and by  
4 California State law where applicable.

5 **II. FACTUAL ALLEGATIONS**

- 6 1. The exhibits included with the original complaint are incorporated herein  
7 by reference, and will not be included with this First Amended Complaint,  
8 but the additional exhibits included herewith will continue the exhibit  
9 numbering from the original complaint, starting with Exhibit 3.  
10  
11 2. Plaintiff Carr was employed by Defendant Providian from October of 1998  
12 to November 28, 2001 (See Exhibit 1, complete copy of Defendant  
13 Liberty's claim file, at CF000091, CF000462, hereafter CF).  
14  
15 3. Before Plaintiff Carr became disabled, she was a director of data services  
16 for Providian Financial Corporation, and earned approximately \$135,000  
17 per year (CF000120) plus year-end bonuses.  
18  
19 4. Plaintiff Carr became ill and disabled while she worked for Defendant  
20 Providian, with a date of disability of August 29, 2001 (CF000462).  
21  
22 5. Plaintiff Carr's treating physicians diagnosed her with fibromyalgia and  
23 Sjögren's Syndrome. As of August 28, 2001, these illnesses and their  
24 chronic symptoms rendered her unable to perform with reasonable  
25 continuity all the material and substantial duties of her own or any other  
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2 occupation for which she is able to be reasonably fitted by training,  
3 education, experience, age, physical, and mental capacity.  
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5 6. When Plaintiff Carr became ill and disabled, she was covered under a  
6 long-term disability insurance policy (LTD policy) offered by Defendant  
7 Providian (CF000462).  
8

9 7. Plaintiff Carr paid LTD premiums to Defendant Liberty until late  
10 November, 2001 in consideration for LTD insurance coverage, which is  
11 defined by Defendant Liberty as follows (CF000021):  
12

13 “Disability” or “Disabled” with respect to Long Term  
14 Disability Coverage means:

15 a. i. If the Covered Person is eligible for the 24 Month  
16 Own Occupation Benefit, “Disability” or “Disabled” means  
17 during the elimination Period and the next 24 months of  
18 Disability the Covered Person is unable to perform all of  
19 the material and substantial duties of his occupation on an  
20 Active Employment basis because of an Injury or Sickness;  
21 and

22 ii. After 24 months of benefits have been paid, the Covered  
23 Person is unable to perform, with reasonable continuity, all  
24 of the material and substantial duties of his own or any  
25 other occupation for which he is or becomes reasonably  
26 fitted by training, education, experience, age and physical  
27 and mental capacity.

28 An employee must first satisfy an elimination period before  
benefits are paid. The policy provision dealing with the elimination  
period reads (CF000022):

“Elimination Period” means a period of consecutive  
days of Disability for which no benefit is payable.

The Elimination Period is shown in the Schedule of Benefits and begins on the first day of Disability.

LONG TERM DISABILITY POLICY  
COVERAGE

Elimination Period: 90 days

8. The premiums for the LTD policy were paid entirely by Plaintiff Carr via paycheck deductions (Exhibit 3, copies of Plaintiff Carr's pay stubs, see the bottom section entitled "After-Tax Deductions," payments made under "Long-Term Disability After Tax"; note that the premium amounts remain the same before and after August 28, 2001), and she continued paying the after-tax premiums on her LTD policy through her last pay check from Defendant Providian, received November 27, 2001.
9. Defendant Liberty accepted the premiums paid by Plaintiff Carr every two weeks from the time she first signed up for LTD benefits until the termination of her leave of absence on November 28, 2001.
10. Plaintiff Carr became unable to perform her regular occupation at Defendant Providian on or around August 28, 2001 (Exhibit 2, copy of letter from Plaintiff's main treating provider on or around August of 2001, as quoted at CF000467 in Plaintiff's last appeal letter; CF000229; *see also* CF000249; CF000351).

11. Plaintiff Carr was laid off from Defendant Providian on or around August 28, 2001 with an effective separation date of November 28, 2001 (CF000091 at § 2), and signed a severance agreement in conjunction therewith (CF000094).
12. The severance agreement wrongly purports to prevent Plaintiff Carr from pursuing her LTD claim against Defendants due to general waiver of claims language contained in the severance agreement.
13. Plaintiff Carr accepted three months' pay of approximately \$36,000 when signing the severance agreement; the LTD benefits are worth approximately \$7,200 per month until Plaintiff Carr turns 65, or approximately ten more years.
14. Plaintiff Carr never intended to waive her rights to file a LTD claim.
15. Plaintiff Carr would not have signed the severance agreement if she had known she was signing away her rights to file a LTD claim.
16. Plaintiff Carr was unable to negotiate the terms of the severance agreement.
17. Plaintiff Carr maintained her status as an active employee of Defendant Providian until November 28, 2001 (CF000091 at § 2).

18. Plaintiff Carr was on an official leave of absence from her duties at Defendant Providian from August 28, 2001 until November 28, 2001 (CF000091).
19. The Plan policy explicitly states that an employee is actively at work if she was at work on the day immediately preceding the day an excused leave of absence began (Exhibit 4, copy of relevant Definitions page of the subject Plan policy).
20. In case the scenario outlined in Section 19 above does not apply to Plaintiff Carr, The Plan policy specifies that, in case an employee is given a leave of absence, the employee's LTD coverage extends to the end of the policy month in which the leave of absence began (Exhibit 5, copy of relevant Definitions page of the subject Plan policy).
21. The Social Security Disability Administration determined on September 27, 2003 that Plaintiff Carr became totally disabled and eligible for benefits on or around August 27, 2001 (CF000304-308). Plaintiff Carr was granted a monthly benefit amount of \$1,509.00 by the Social Security Disability Administration.
22. Plaintiff Carr's disabling medical conditions and their symptoms prevented her from performing the material and substantial duties of her regular occupation at Defendant Providian, and continue to prevent her

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2 from performing any occupation Defendant Providian can make available  
3 to her, or from working in any reasonable occupation for which she can be  
4 fitted by education, training, or experience.  
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6 23. As long as Plaintiff Carr meets the definitions of disability in the LTD  
7 policy, she is entitled to receive long-term disability benefits under the  
8 LTD policy until she reaches 65 years of age on or about October 16, 2014  
9 (CF000462).  
10

11 24. Plaintiff Carr's date of disability was August 28, 2001, and she became  
12 eligible for LTD benefits as of August 29, 2001. She was completely  
13 disabled during the 90-day elimination period and she remains completely  
14 disabled today.  
15

16 25. Plaintiff Carr's elimination period ended on November 27, 2001, 90 days  
17 after August 29, 2001 (CF000462).  
18

19 26. Plaintiff Carr filed a claim with Defendant Liberty for benefits under the  
20 LTD policy on or around November 29, 2001. Defendant Liberty denied  
21 this claim on or around January 22, 2002 (CF001094).  
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23 27. Plaintiff Carr appealed on or around March 15, 2002 (CF001094), and  
24 Defendant Liberty again denied the appeal on or around April 29, 2002  
25 (CF000960).  
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3 28. Plaintiff Carr filed yet another claim for benefits under the LTD plan on or  
4 around July 28, 2003 (CF000937), which Defendant Liberty denied on or  
5 around November 17, 2003 (CF000768).
- 6 29. Plaintiff Carr submitted a comprehensive appeal letter to Defendant  
7 Liberty on or about December 14, 2004 (CF000465), which included  
8 medical records from Plaintiff's treating provider Carol L. Lamb, M.D.  
9 (CF000171-212); Plaintiff's treating provider Rajiv Dixit, M.D.  
10 (CF000213-248); consulting physician and nationally renowned  
11 fibromyalgia expert Robert Bennett, M.D. (CF000249-303); nationally  
12 renowned consulting physical capacities evaluator Theodore Becker,  
13 Ph.D., RPT, (CF000309-350); consulting nationally renowned  
14 neuropsychologist Jay Uomoto, Ph.D. (CF000351-381); consulting  
15 vocational expert Donald Uslan, M.A., M.B.A. (CF000382-454); copy of  
16 the Social Security Disability Administration's Notice of Award of  
17 Disability (CF000304-308); and copies of personal letters of support  
18 (CF000455-461).
- 19 30. Plaintiff Defendant Liberty denied Plaintiff's appeal yet again on January  
20 28, 2005 (CF000021).
- 21 31. Plaintiff Carr primary treating provider on or around August 29, 2001 was  
22 Dr. Carol L. Lamb, M.D.  
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3 32. On or around January 3, 2002, Dr. Lamb wrote an Attending Physician's  
4 Statement to Defendant Liberty wherein she stated that Plaintiff Carr was  
5 suffering from gastroesophageal reflux disease, hypertension,  
6 fibromyalgia, and anxiety.

7  
8 33. However, Dr. Lamb could not state that Plaintiff Carr had any physical  
9 work restrictions as she did not know the full effects of Plaintiff Carr's  
10 disabling fibromyalgia.

11 34. In October of 2001, Dr. Lamb referred Plaintiff Carr to rheumatologist  
12 Rajiv K. Dixit, MD, FACP, for further rheumatological workup.

13  
14 35. Dr. Dixit established that Plaintiff Carr was unable to work and totally  
15 disabled (CF000229).

16 36. On October 1, 2004, Dr. Lamb wrote:

17 During the period of February to August of 2001, I saw  
18 [Plaintiff Carr] on multiple occasions for varying  
19 complaints. These included joint aches, fatigue, rash,  
20 headaches and neck pain. The symptoms progressed, and I  
21 felt that there was likely a rheumatologic condition of some  
22 sort. I referred her to see Dr. Dixit, a local rheumatologist  
in August 2001. He ultimately diagnosed fibromyalgia and  
Sjögren's Syndrome.

23 In retrospect, I believe her condition was such that it did not  
24 allow her to do full work duties - I believe that her  
25 condition was at least a Class 3, if not worse (slight to  
26 moderate limitation of functional capacity). **I would defer**  
27 **to her rheumatologist's opinion regarding the degree to**  
**which her symptoms interfered with her ability to**  
**perform her usual job.** I do not believe there was a

significant change in her symptoms from the time I saw her in August, 2001, until she was seen by Dr. Dixit in October of 2001.

37. Dr. Lamb clarified her opinion regarding Plaintiff Carr's ability to work from August, 2001 through her elimination period. Dr. Lamb defers to Plaintiff's Carr's rheumatologists (Dr. Dixit, Dr. Bennett) for further determination of Plaintiff's Carr's disability due to fibromyalgia.
38. Plaintiff Carr first saw Dr. Dixit on October 24, 2001 (medical records at CF000213-248). After taking a full history and physical examination, Dr. Dixit diagnosed Plaintiff Carr with Sjögren's syndrome, fibromyalgia syndrome, and hypertension, among other diagnoses.
39. Dr. Dixit finds that Plaintiff Carr was completely disabled dating back to Plaintiff Carr's initial date of disability, August 29, 2001. Dr. Dixit opines consistently over three years that Plaintiff Carr is completely disabled by fibromyalgia, Sjögren's Syndrome, and their related symptomatology.
40. In a report dated March 26, 2003, Dr. Dixit wrote, "This patient has been disabled for a prolonged period of time. Her prognosis is poor. She is totally and permanently disabled and unlikely to be able to return to any form of employment." (CF000229).
41. On September 2, 2004, Dr. Dixit wrote:

I have reviewed the reports by Dr. Bennett and also the report by Dr. Uomoto. I believe you have copies of these

reports. As you well know, Dr. Uomoto's feeling, in line with my medical impression, is that the patient has cognitive disorder and fibromyalgia syndrome. You also know from the report of Dr. Bennett that the patient has fibromyalgia with an associated mood and sleep disorder. I am in agreement with him that this developed during 2001. As noted by Dr. Bennett, despite long-standing and appropriate treatment with a trial of multiple modalities, the patient has not experienced any significant improvement in her symptoms. Indeed, a case could be made for steady deterioration of her symptoms.

I will once again emphasize that the patient has long-standing and severe fibromyalgia and that the symptoms of this became disabling in the summer of 2001. The condition has resulted in total and permanent disability. I do not believe that Mrs. Carr is employable.

42. Plaintiff Carr was also seen by Robert Bennett, MD for a rheumatological consultation on April 13, 2004 (records at 249-303, CV at CF000271-303).

43. Dr. Bennett is a board-certified rheumatologist and world-renowned expert on fibromyalgia.

44. He based his opinion on history, medical records, literature, and client examination.

45. Upon palpation, Plaintiff Carr was positive for 17 out of 18 fibromyalgia tender points.

46. Dr. Bennett wrote :

Based on the information I reviewed, including my own history and physical examination, Plaintiff Carr is entirely

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3 disabled from being able to be competitively employed in  
4 the demanding and high stress jobs that she held up to  
5 2001. The Social Security Administration has agreed that  
6 she is disabled and awarded her Social Security Disability  
7 pension retroactive to August of 2001 . . .

8  
9 The major reasons for Plaintiff Carr's disability are  
10 the constant musculoskeletal pain of fibromyalgia  
11 with its associated cognitive dysfunction and non-  
12 restorative sleep with associated fatigability. She  
13 also has a diagnosis of Sjögren's syndrome - this is  
14 a chronic autoimmune disorder that itself causes  
15 fatigue and varying degrees of disability. There is  
16 no known cure for Sjögren's syndrome and over  
17 time it may involve major organs such as the lungs,  
heart and brain. Patients with Sjögren's syndrome  
have a 44 fold risk of developing lymphoma. Her  
disability is compounded by a moderately severe  
mood disorder with both depression and anxiety  
components. Currently there is no cure for  
fibromyalgia or Sjögren's syndrome and at age 54  
it is my opinion that Plaintiff Carr is permanently  
disabled and will not be able to be competitively  
employed at any time in the future. (CF000256).

18 47. Renowned physical capacities evaluator Theodore Becker, Ph.D., RPT, performed  
19 a physical capacity evaluation of Plaintiff Carr on May 4, 2004 (report CF000309-  
20 350, CV at CF000340-350).

21  
22 48. Dr. Becker's report concludes that Plaintiff Carr is unable to perform the material  
23 duties of her own or any other occupation. She is completely and totally disabled.

24 49. Dr. Becker's report conclusively states that Plaintiff Carr is work intolerant.

25 50. Dr. Becker performed a battery of performance tests on Plaintiff Carr over a  
26 period of 9.5 hours on two days, May 4-5, 2004.  
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3 51. Regarding Plaintiff Carr's step test, Dr. Becker wrote:

4 The overall physiological response shows significant  
5 dysfunction of tolerance, indicating inability to sustain  
6 activity. There is exceptionally restricted physiology,  
7 which will indicate that tolerances of function cannot be  
8 sustained. (CF000318).

9 52. In addition, Dr. Becker put Plaintiff Carr through a Gait Evaluation/Physiology  
10 test. After the results of that test, Dr. Becker stated:

11 The physiological response is exceptionally dysfunctional,  
12 showing inability to sustain activity. The overall  
13 performance will indicate that she is unable to maintain  
14 physiological response associated with work environment.  
15 (*Id.*)

16 53. Dr. Becker concluded:

17 Exceptionally restricted with poor tolerance of sustainable  
18 application. There is gross physiological challenge, which  
19 indicates inability to sustain seated activity work, and also  
20 inability to sustain upright application work. The overall  
21 work tolerances in sedentary application should be  
22 identified as 4 to 8 beats above resting, or in this case at 68  
23 b.p.m. Her output response, which is inconsistent with the  
24 expected linear and steady state output response.  
25 (CF000320).

26 54. Dr. Becker agrees with Plaintiff Carr's other providers that she is completely and  
27 totally disabled. Thus he summarizes Plaintiff Carr's inability to work:

28 The physiological output response precludes her ability to  
sustain work in an ongoing basis, as required of  
competitive and predictable work function. Both  
sedentary/seated work and upright/standing work fails to  
meet the criterion of acceptance in physiology of linear and  
steady state. All work endeavors show decreasing

performance over time, with increasing physiological response of heart rate elevation. (CF000321).

55. Plaintiff Carr was also evaluated by preeminent neuropsychologist Jay M. Uomoto, Ph.D. (records at CF000351-381)

56. Dr. Uomoto is a licensed psychologist specializing in neuropsychology (CV at CF000371-381).

57. He is also a fellow and diplomate in medical psychotherapy of the American Board of Medical Psychotherapists and Psycho-diagnostician, and a professor in the graduate department of psychology at Seattle Pacific University.

58. Dr. Uomoto found in his May 7, 2004 evaluation that Plaintiff Carr had significant cognitive problems stemming from her fibromyalgia.

59. In checking the validity of his testing he wrote:

Given the patient's effort on the examination, behavioral presentation throughout testing procedures, and results of symptom validity testing, the patient's performance was judged to be a reflection of maximum effort. Using the Slick Criteria the patient did not meet criteria for malingered neurocognitive dysfunction. The patient also did not evidence behaviors or performances that are indicative of symptom enhancement or dissimulation. The patient put forth a concerted effort on all tasks, and test results represent the patient's maximum cognitive capacity in the context of this evaluation. (CF000355-356).

Dr. Uomoto discusses several areas where Plaintiff Carr has cognitive impairment affecting her ability to work in any occupation by noting:

- Impairment in motor strength bilaterally

Impaired oral word fluency (letter fluency) likely due to impaired information processing skill

- Alternating and divided attention deficits; likely to be easily derailed from the task at hand
- Impaired sustained attention ability where there is a demand for speeded and efficient processing of information
- Impaired verbal declarative memory when new learning and consistent recall is required
- Impaired visual-spatial learning ability upon single trial learning demands; and
- Problem-solving and adaptive reasoning impairment

60. Dr. Uomoto concludes:

The patient's current neuropsychological problems are likely to interfere with her prior work tasks. The patient states that her work required a significant degree of analytical thinking, problem-solving, trouble shooting, and working with complex concepts. She was required to work very quickly, identify patterns in problems that arise in database management and in data architecture aspects of her position, and to develop efficacious solutions to these problems. The current results suggest she would have difficulties with these types of analytical tasks, due to her attention problems, difficulties with simultaneous processing secondary to alternating and divided attention demands. Adaptive reasoning deficits will also play a role in these daily work tasks. She often is required to convey complex technical concepts to senior management, and this requires considerable problem-solving ability. Her cognitive impairments will make this difficult to do. Problems with attention will likely impact her ability to sustain her effort on complex tasks in the work setting. Due to memory deficits, she will have trouble tracking and storing important information that may be provided to her incidentally. This in turn will affect her problem-solving effectiveness. Problems with chronic pain, sleep deprivation and fatigue also contribute to her cognitive problems.

On the basis of reasonable neuropsychological probability, and on a more likely than not basis, the patient is not competitively employable on a full-time or part-time basis in her former position.



I would concur with Dr. Dixit's conclusion of March 2003 that the patient is not competitively employable in any position. (CF000361-362).

61. Plaintiff Carr was also evaluated by a vocational rehabilitation specialist Donald Uslan, MA, MBA on May 5, 2004 (CF000382-454, CV at CF000427-454).

62. Mr. Uslan evaluated Plaintiff Carr for employability.

63. He reviewed records from her treating physicians and independent evaluators as noted above, and also reviewed records from Defendant Liberty, and concluded that, "... it is my opinion that she is totally and completely disabled from any and all employment, be it full or part-time, in any exertional level of employment." (CF000425).

64. Mr. Uslan also states:

Plaintiff Carr is not able to work in the competitive labor market for gainful employment on a full-time basis, be it unskilled, semi-skilled or skilled level, or in the sedentary, light or medium exertional categories. It is not reasonable, nor possible, for an employer to accommodate her medical conditions with her functional limitations at this time. Plaintiff Carr is not able to work at another position.

65. Mr. Uslan concludes:

As a licensed mental health counselor and certified rehabilitation counselor in clinical practice, it is my opinion, on a more-probable-than-not-basis, that Plaintiff Carr is totally and completely disabled. I base this judgment on my professional experience in treating and evaluating hundreds of patients with the same or similar medical, physical and cognitive conditions as Plaintiff Carr, and in my professional capacity in having published and

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3 lectured extensively on this subject (disability, impairment  
4 and rehabilitation in rheumatologic conditions) . . . in  
5 consideration of her age, medical and physical condition,  
6 education and training.

7  
8 66. Plaintiff Carr also has friends and family who have written personal statements  
9 regarding her disability.

10 67. Plaintiff Carr's friend, Amy Chernay, wrote (CF000455):

11 I have known Anita Carr for 23 years. When she lived near  
12 me in Texas she was a very active adult. She volunteered  
13 for political campaigns and at her daughter's school. She  
14 also had many other volunteer activities such as teaching  
15 computer skills to elementary aged school children,  
16 working on local arts projects, activities in her church and  
17 PTA and volunteering at local museums to give docent  
18 tours. She also played tennis and I took 3-mile walks with  
19 her regularly. She was an active mother who had full  
20 responsibility for a young child. She also completed a  
21 degree in graduate school.

22 Anita now complains of being in constant pain and being  
23 unable to carry out the duties taking care of her home as she  
24 once had. She also complains of problems with her  
25 memory.

26  
27 68. Ellen Hancock wrote a letter supporting Plaintiff Carr's claim for disability  
28 (CF000456-457):

29 . . . She has also been a successful businesswoman,  
30 working her way up into a Director level position at several  
31 companies. She has some very strong ethics and always  
32 had enjoyed her work in a highly technical field and put in  
33 some very long days.

Anita skied, did white-water rafting & played tennis up until 2001, but she found it too painful to do these physical activities since she diagnosed with fibromyalgia.

Since the spring of 2001, Anita's health has been problematic. She has not been able to drive much & has complained of headaches, pain, dizziness, fatigue, heart palpitations, nausea, memory issues & general malaise. She has consistently complained to me about these symptoms and continues to do so.

Sometimes when I call her in the middle of the day I am waking her up from a long nap. When I saw her on July 29<sup>th</sup>, 2004 and we went for a very short walk of several blocks, she became fatigued and her legs hurt. That same day when we ate lunch, she arose from her dining chair in pain and moved very slowly.

On August 29<sup>th</sup> we went shopping and when we went into the first store, Anita wanted to find a place to sit and have tea in their small café, saying she was already tired.

69. Plaintiff Carr's daughter, Elena Carr, wrote (CF000459):

I am the only child of Anita B. Carr and have a very close relationship with her. Since she has been afflicted with fibromyalgia, her energy levels have dropped dramatically. Sometimes she has trouble simply getting out of bed and is forced to take several rests throughout the day.

Her ability to function in normal situations has dramatically decreased. Recently, my mother and I visited Las Vegas. We had just arrived and checked into the hotel. After my mom took a nap, we went out to explore the strip. We had only walked a few blocks when she could go no further. Her frustration with the pain quickly turned to tears and we had to sit for twenty minutes before she could muster the energy to return to the hotel, where she promptly went back to bed. This is the same woman who would drive me to

Yosemite for a weekend and wake up at the crack of dawn  
for an all-day hike to Vernal Falls.

70. Plaintiff Carr wrote (CF000460-461):

Starting in January of 2001 I began experiencing severe headaches, severe neck pain, severe arm & hand pain, numbness & tingling in my hands, moderate back pain, moderate leg & knee pain, overwhelming tiredness, weakness, mental confusion & forgetfulness. I had very dry eyes and was using eye drops several times a day. I had to go home on many lunch hours to just sleep and fortunately I lived 5 minutes from my office. I found that I had no energy in the morning after awakening from at least 7 hours of sleep. I felt very tired & weak and felt like I could not even go to work. I forced myself. I typically worked a 10 hour day.

I finally felt that I could not continue to work. I was exhausted. I was having more serious memory issues (even once forgetting the name of a former employee from SBC Corporation who had come to work at Providian) and I was living in pain. I could not keyboard due to the pain in my hands/wrists/arms. I could not concentrate in meetings and I would lose track of my train of thoughts. I had headaches every day. My last day of work was Aug. 28, 2001.

After I left the work environment I would wake up in the morning and then feel so tired I had to go right back to sleep and I would sleep 3-4 hours of very deep sleep. I had no energy. On some days I was in too much pain to get out of bed.

I continue to experience headaches, severe pain, overwhelming tiredness and cognitive problems. Again, the symptoms wax and wane. I seem to have somewhat better days if it is warm and the pressure is high. Other days, for no real reason, I cannot get out of bed due to the pain. Even the bottom of my feet hurt to walk on them.

I typically try to read the morning newspaper when I wake up, but most often I cannot stay focused on a single article to read through it.

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3 71. All of Plaintiff Carr's providers agree she continues to be severely disabled and  
4 can no longer meet the requirements of full time work in her own or any other  
5 occupation, and that this has been so since August 28, 2001 or sooner.
- 6 72. Plaintiff Carr fulfills Liberty Life's definition of disability as she, since August 29,  
7 2001, has been unable to perform, with reasonable continuity, all of the material  
8 and substantial duties of her own or any other occupation for which she is or could  
9 become reasonably fitted by training, education, experience, age and physical and  
10 mental capacity dating back to August 29, 2001.
- 11  
12 73. Plaintiff Carr was completely and totally disabled throughout the entire  
13 elimination period as discussed by her doctors and independent evaluators.
- 14  
15 74. Defendant Liberty never informed Plaintiff Carr in numerous written  
16 communications during more than three years of administering her LTD claim  
17 that she was precluded from filing a LTD claim under the Plan due to any waiver  
18 of LTD coverage signed by her (for examples of key communications where  
19 Defendant never raised this issue, see, *inter alia*, CF00021, CF000768,  
20 CF000960, and CF001094).
- 21  
22 75. In a letter to Plaintiff Carr's counsel dated March 14, 2005, Defendant Providian's  
23 house counsel D'Anne L. Gleicher did not state that Plaintiff Carr was precluded  
24 from filing a LTD claim due to signed waiver (Exhibit 6).  
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### III. ESTOPPEL

Plaintiff Carr adopts and alleges all of the foregoing facts. Assuming *arguendo* that the severance agreement prevents Plaintiff Carr from filing a LTD claim, which is not what Plaintiff Carr believes, Plaintiff Carr alleges:

1. Defendant Liberty represented to Plaintiff Carr over the course of more than three years that she was not barred from making a claim for LTD benefits due to previous waiver, and that the only issue preventing her from obtaining LTD benefits was based on the merits of her claim, as manifested by numerous communications from Defendant Liberty.
2. Plaintiff Carr paid Defendant Liberty premiums for her LTD coverage until November 28, 2001.
3. Defendant Liberty accepted the premiums for LTD coverage.
4. Defendant Liberty should reasonably have known that Plaintiff Carr would rely upon their representations to her detriment.
5. Plaintiff Carr has relied to her detriment upon Defendant Liberty's manifestations and her knowledge that she paid LTD premiums to Defendant Liberty which they kept.
6. Given Defendant Liberty's representations and retention of LTD premiums paid by Plaintiff Carr, it was entirely reasonable for her to believe she had not waived her rights to file a LTD claim.

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- 3 7. Plaintiff Carr could not have known that Defendant's conduct was misleading.
- 4 8. The facts alleged invoke the doctrine of Equitable Estoppel against Defendants,
- 5 precluding them from alleging Plaintiff Carr waived her right to file a LTD claim.

6 **IV. RIGHT TO BENEFIT UNDER ERISA**

7 Plaintiff Carr adopts and alleges all of the foregoing, and alleges:

- 8
- 9 1. The LTD policy at issue in this case may be determined by the Court to be an
- 10 "employee welfare benefit plan" or a "welfare plan," as defined in §1002 of *The*
- 11 *Employment Retirement Income Security Act*, 29 U.S.C., § 1001, *et seq.*
- 12 ("ERISA").
- 13
- 14 2. If this Court finds that the disability insurance purchased from Defendant Liberty
- 15 is governed by ERISA, Plaintiff Carr alleges that Defendant Liberty violated
- 16 federal statutory and common law duties owed to Plaintiff Carr when Defendant
- 17 Liberty terminated her benefits.
- 18
- 19 3. Defendant Liberty's breach of the duties it owed to Plaintiff Carr proximately
- 20 caused Plaintiff Carr damages that were natural and foreseeable consequences of
- 21 Defendant Liberty's wrongful conduct.
- 22
- 23 4. Plaintiff has the express right and standing under ERISA § 1132 to bring a cause
- 24 of action against Defendant Liberty to enforce her rights and recover the benefits
- 25 she is due under the terms of her LTD policy, and to clarify her rights to future
- 26 benefits under the terms of the LTD policy.
- 27

- 1
- 2
- 3 5. Under ERISA, Plaintiff Carr has the right to recover the reasonable attorneys' fees
- 4 and costs she incurred in this action against Defendant Liberty, should the
- 5 Plaintiff establish her rights to recover the disability benefits terminated and
- 6 denied her by Defendant Liberty.

7

8 **V. CONTRACT DEFENSES SUPPORTING DECLARATORY JUDGMENT**

9 **INVALIDATING THE SEVERANCE AGREEMENT**

10 Plaintiff Carr adopts and alleges all of the foregoing facts. With respect to the

11 severance agreement, Plaintiff Carr alleges:

- 12 1. When Plaintiff Carr signed the severance agreement, there was lacking mutuality
- 13 of consent and no meeting of the minds as to the substance of the agreement.
- 14 2. The severance agreement is a contract of adhesion.
- 15 3. Plaintiff Carr signed the severance agreement under undue influence.
- 16 4. The severance agreement was a constructive fraud as Defendant Providian
- 17 attempted to get Plaintiff Carr to waive her contractual rights to file a LTD claim,
- 18 for which she continued to pay premiums, and for which the Plan Policy language
- 19 specifically states she had coverage.
- 20 5. The Severance agreement was signed under mutual mistake as to the terms of the
- 21 agreement.
- 22 6. The severance agreement is an unconscionable contract as Defendant attempted to
- 23 get Plaintiff Carr to waive her contractual entitlement to file a LTD claim under
- 24
- 25
- 26
- 27



the clear and unambiguous language of the subject Plan Policy, for which coverage she continued to pay premiums.

7. The severance agreement is unlawful as it is contrary to good morals in that Plaintiff Carr manifestly paid premiums for LTD coverage, for which the subject Plan Policy specifically states she is eligible under the terms of Plaintiff Carr's leave of absence, and which coverage Defendants now deny her while having accepted her LTD premiums.

#### **VI. PRAYER FOR RELIEF**

Plaintiff Carr prays for judgment against Defendant Liberty as follows:


1. Declaratory judgment and an injunction stating that the severance agreement is null and void with respect to Plaintiff Carr's ability to file a LTD claim.
2. Declaratory judgment and an injunction providing that the Court enforce Defendants' continuing obligations owed Plaintiff on her long-term disability policy, and that Defendants cannot decline to pay her in the future for reasons wrongfully relied on to the time of judgment;
3. An award of full benefits due Plaintiff under the Plan from the time of initial entitlement to benefits, August 29, 2001, to the date of judgment in favor of Plaintiff in this case; and

- 1
- 2
- 3 4. For Plaintiff's attorney fees, costs, and disbursements incurred by bringing this
- 4 cause of action, along with pre-judgment interest and any other relief permitted by
- 5 law, which the Court deems just and equitable.

6 Dated September 30, 2005:

7 KRAFCHICK LAW FIRM

8

9 

10 By: \_\_\_\_\_

11 Steven P. Krafchick, WSBA #13542

12 Attorney for Plaintiff

13 Pro Hac Vice Application pending

14 Krafchick Law Firm

15 2701 First Avenue, Suite 340

16 Seattle, WA 98121

17 T: 206.374.7370 F: 206.374.7377

18 Email: klf@krafchick.com

19

20

21

22

23

24

25

26

27

28 PLAINTIFF'S FIRST  
AMENDED COMPLAINT - 26

**KRAFCHICK LAW FIRM**  
2701 First Avenue, Suite 340  
Seattle, Washington 98121  
(206) 374-7370 Fax (206) 374-7377

# **Exhibit 3**

Employee	Id		Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR	013033		557-82-9558	Single	US-18/0	CA-18/0	D451408
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	06/30/01	07/13/01	07/13/01

Earnings	Rate	Units	Current	Year To Date	Paid Time Off	Eligible Amt
Salary	-	-	5,192.31	69,576.95	Time Bank Bal (Hrs)	192.00
Mgmt Incentive Plan Awar	-	-	-	9,003.35		
Stock Ownership Plan Mat	-	-	-	8,263.40		
Time Bank - Planned	-	-	-	2,596.16		
Time Bank - Unplanned	-	-	-	519.23	Direct Deposit Accounts	Amount
PVN Dividend -Restricted	-	-	-	12.72	Checking - 0043862306	3514.78
Group Term Life >\$50,000	-	-	36.09	505.26		
Flex Benefit Credits	-	-	180.76	2,530.64		
Total			5,409.16	93,007.71	Memo Entries	Current Year To Date
					401(k) Plan - Employer Match	171.35 2,695.96

Taxes		
Federal Income Tax	568.71	12,542.42
Social Security (FICA)	-	4,984.80
Federal Medicare	75.26	1,302.55
California Income Tax	301.61	5,150.61
California State Disability	-	416.94
Total	945.58	24,397.32

Pre-Tax Deductions		
401(k) Salary Deferral	519.23	8,751.20
Medical Plan	151.26	2,117.64
Dental Plan	35.07	490.98
Vision Plan	8.46	118.44
Life Insurance Plan	12.60	176.40
Accidental Death & Dismmbrment	1.73	24.22
Health Care FSA	9.61	134.54
Dependent Care FSA	-	101.52
Total	737.96	11,914.94

After-Tax Deductions		
Taxable 401(k)	155.77	1,505.78
PVN Dividend -Restricted	-	12.72
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	126.00
Dependent Life	0.85	11.90
Short-Term Disability Plan	9.13	127.82
Group Term Life > \$50,000	36.09	505.26
Total	210.84	10,552.88

W2 Gross	4,671.20	81,092.77
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**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee	Id		Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR	013033		557-82-9558	Single	US- 18/0 CA- 18/0		D459277
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	07/14/01	07/27/01	07/27/01

Earnings	Rate	Units	Current	Year To Date	Paid Time Off	Eligible Amt
Salary	-	-	5,192.31	74,769.26	Time Bank Bal (Hrs)	192.00
Mgmt Incentive Plan Awar	-	-	-	9,003.35		
Stock Ownership Plan Mat	-	-	-	8,263.40		
Time Bank - Planned	-	-	-	2,596.16		
Time Bank - Unplanned	-	-	-	519.23		
PVN Dividend -Restricted	-	-	12.72	25.44		
Group Term Life >\$50,000	-	-	36.09	541.35		
Flex Benefit Credits	-	-	180.76	2,711.40		
Total			5,421.88	98,429.59		

Direct Deposit Accounts	Amount
Checking - 0043862306	3510.46

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	171.34	2,867.30

Taxes		
Federal Income Tax	572.27	13,114.69
Social Security (FICA)	-	4,984.80
Federal Medicare	75.26	1,377.81
California Income Tax	302.37	5,452.98
California State Disability	-	416.94
Total	949.90	25,347.22

Messages	
NonExempt PTO Balance Reflect Time Reported Through 07/20/01	

Pre-Tax Deductions		
401(k) Salary Deferral	519.23	9,270.43
Medical Plan	151.26	2,268.90
Dental Plan	35.07	526.05
Vision Plan	8.46	126.90
Life Insurance Plan	12.60	189.00
Accidental Death & Dismbrment	1.73	25.95
Health Care FSA	9.61	144.15
Dependent Care FSA	-	101.52
Total	737.96	12,652.90

After-Tax Deductions		
Taxable 401(k)	155.77	1,661.55
PVN Dividend -Restricted	12.72	25.44
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	135.00
Dependent Life	0.85	12.75
Short-Term Disability Plan	9.13	136.95
Group Term Life > \$50,000	36.09	541.35
Total	223.56	10,776.44

W2 Gross	4,683.92	85,776.69
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**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee		Id	Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR		013033	557-82-9558	Single	US-18/0	CA-18/0	D467120
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	07/28/01	08/10/01	08/10/01

Earnings	Rate	Units	Current	Year To Date	Paid Time Off	Eligible Amt
Salary	-	-	5,192.31	79,961.57	Time Bank Bal (Hrs)	192.00
Mgmt Incentive Plan Awar	-	-	-	9,003.35		
Stock Ownership Plan Mat	-	-	-	8,263.40		
Time Bank - Planned	-	-	-	2,596.16		
Time Bank - Unplanned	-	-	-	519.23		
PVN Dividend -Restricted	-	-	-	25.44		
Group Term Life >\$50,000	-	-	36.09	577.44		
Flex Benefit Credits	-	-	180.76	2,892.16		
Total			5,409.16	103,838.75		

Direct Deposit Accounts	Amount
Checking - 0043862306	3514.77

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	171.35	3,038.65

**Taxes**

Federal Income Tax	568.71	13,683.40
Social Security (FICA)	-	4,984.80
Federal Medicare	75.27	1,453.08
California Income Tax	301.61	5,754.59
California State Disability	-	416.94
Total	945.59	26,292.81

**Messages**

NonExempt PTO Balance Reflect Time  
Reported Through 08/03/01

**Pre-Tax Deductions**

401(k) Salary Deferral	519.23	9,789.66
Medical Plan	151.26	2,420.16
Dental Plan	35.07	561.12
Vision Plan	8.46	135.36
Life Insurance Plan	12.60	201.60
Accidental Death & Dismmbrment	1.73	27.68
Health Care FSA	9.61	153.76
Dependent Care FSA	-	101.52
Total	737.96	13,390.86

**After-Tax Deductions**

Taxable 401(k)	155.77	1,817.32
PVN Dividend -Restricted	-	25.44
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	144.00
Dependent Life	0.85	13.60
Short-Term Disability Plan	9.13	146.08
Group Term Life > \$50,000	36.09	577.44
Total	210.84	10,987.28

W2 Gross	4,671.20	90,447.89
----------	----------	-----------

**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee							
ANITA B. CARR	Id	Social Security	Status	Exemptions/Allowances		Number	
	013033	557-82-9558	Single	US-18/0 CA-18/0		1040708	
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	08/25/01	09/07/01	08/27/01
8/27 8/28							

Earnings	Rate	Units	Current	Year To Date
Salary	64.9039	16.00	1,038.46	86,192.34
Mgmt Incentive Plan Award				9,003.35
Stock Ownership Plan Match				8,263.40
Time Bank - Planned				2,596.16
Time Bank - Unplanned				519.23
Time Bank - Termination	64.9039	40.00	2,596.16	2,596.16
PVN Dividend - Restricted				25.44
Group Term Life > \$50,000			36.09	649.62
Flex Benefit Credits			180.76	3,253.68
Total			3,851.47	113,099.38

Paid Time Off	Eligible Amt
Time Bank Bal. (Hrs)	192.00

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	34.27	3,244.27

Taxes		
Federal Income Tax	253.23	14,505.34
Social Security (FICA)		4,984.80
Federal Medicare	52.67	1,581.01
California Income Tax	195.37	6,251.57
California State Disability		416.94
Total	501.27	27,739.66

Pre-Tax Deductions		
401(k) Salary Deferral	103.85	10,412.74
Medical Plan	151.26	2,722.68
Dental Plan	35.07	631.26
Vision Plan	8.46	152.28
Life Insurance Plan	12.60	226.80
Accidental Death & Dismemberment	1.73	31.14
Health Care FSA	9.81	172.98
Dependent Care FSA		101.52
Total	322.58	14,451.40

After-Tax Deductions		
Taxable 401(k)	26.91	2,000.00
PVN Dividend - Restricted		25.44
SOP Shares Delivered		8,263.40
Long-Term Disability After Tax	9.00	182.00
Dependent Life	0.86	15.30
Short-Term Disability Plan	9.13	164.34
Group Term Life > \$50,000	36.09	649.62
Total	81.98	11,280.10

**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee	Id		Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR	013033		557-82-9558	Single	US-18/0	CA-18/0	1041533
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	08/25/01	09/07/01	09/26/01

Earnings	Rate	Units	Current	Year To Date
Salary	64.9039	64.00	4,153.85	90,346.19
Mgmt Incentive Plan Award	-	-	-	9,003.35
Stock Ownership Plan Match	-	-	-	8,263.40
Time Bank - Planned	-	-	-	2,596.16
Time Bank - Unplanned	-	-	-	519.23
Time Bank - Termination	-	-	-	2,596.16
PVN Dividend -Restricted	-	-	-	25.44
Group Term Life >\$50,000	-	-	-	649.62
Flex Benefit Credits	-	-	-	3,253.68
Customer Svc Challenge Bonus	-	-	-	500.00
Total			4,153.85	117,753.23

Taxes	Current	Year To Date
Federal Income Tax	421.65	15,050.74
Social Security (FICA)	-	4,984.80
Federal Medicare	60.23	1,648.49
California Income Tax	253.38	6,531.95
California State Disability	-	416.94
Total	735.26	28,632.92

Pre-Tax Deductions	Current	Year To Date
401(k) Salary Deferral	37.26	10,500.00
Medical Plan	-	2,722.68
Dental Plan	-	631.26
Vision Plan	-	152.28
Life Insurance Plan	-	226.80
Accidental Death & Dismmbrment	-	31.14
Health Care FSA	-	172.98
Dependent Care FSA	-	101.52
Total	37.26	14,538.66

After-Tax Deductions	Current	Year To Date
Taxable 401(k)	-	2,015.00
PVN Dividend -Restricted	-	25.44
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	-	162.00
Dependent Life	-	15.30
Short-Term Disability Plan	-	164.34
Group Term Life > \$50,000	-	649.62
Total	-	11,295.10

Paid Time Off	Eligible Amt
Time Bank Bal (Hrs)	152.00

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	137.07	3,397.84

PAY STOP  
FROM  
LAYOFF DAY

Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

ProBusiness



Employee						
	Id	Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR	013033	557-82-9558	Single	US-18/0	CA-18/0	1041534
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End
PNBC	1	0008	100203	10/19/98	09/08/01	09/21/01
						Pay Date
						09/26/01

Earnings	Rate	Units	Current	Year To Date
Salary	-	-	5,192.31	95,538.50
Mgmt Incentive Plan Award	-	-	-	9,003.35
Stock Ownership Plan Match	-	-	-	8,263.40
Time Bank - Planned	-	-	-	2,596.16
Time Bank - Unplanned	-	-	-	519.23
Time Bank	-	-	-	2,596.16
PVN Dividend - Restricted	-	-	-	25.44
Group Term Life >\$50,000	-	-	36.09	685.71
Flex Benefit Credits	-	-	180.76	3,434.44
Customer Svc Challenge Bonus	-	-	-	500.00
Total	-	-	5,409.16	123,162.39

Paid Time Off	Eligible Amt
Time Bank Bal (Hrs)	152.00

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	171.35	3,569.19

Taxes	Current	Year To Date
Federal Income Tax	724.48	15,775.22
Social Security (FICA)	-	4,984.80
Federal Medicare	75.26	1,723.75
California Income Tax	349.90	6,881.85
California State Disability	-	416.94
Total	1,149.64	29,782.56

Pre-Tax Deductions	Current	Year To Date
401(k) Salary Deferral	-	10,500.00
Medical Plan	151.26	2,873.94
Dental Plan	35.07	666.33
Vision Plan	8.46	160.74
Life Insurance Plan	12.60	239.40
Accidental Death & Dismmbrment	1.73	32.87
Health Care FSA	9.61	182.59
Dependent Care FSA	-	101.52
Total	218.73	14,757.39

After-Tax Deductions	Current	Year To Date
401(K) Loan #1	196.77	196.77
Taxable 401(k)	-	2,015.00
PVN Dividend - Restricted	-	25.44
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	171.00
Dependent Life	0.85	16.15
Short-Term Disability Plan	9.13	173.47
Group Term Life > \$50,000	36.09	685.71
Total	251.84	11,646.94

**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee	Id	Social Security	Status	Exemptions/Allowances		Number	
ANITA B. CARR	013033	557-82-9558	Single	US- 18/0	CA- 18/0	0307667	
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	09/22/01	10/05/01	10/05/01

Earnings	Rate	Units	Current	Year To Date
Salary	-	-	5,192.31	100,730.81
Mgmt Incentive Plan Awar	-	-	-	9,003.35
Stock Ownership Plan Mat	-	-	-	8,263.40
Time Bank - Planned	-	-	-	2,596.16
Time Bank - Unplanned	-	-	-	519.23
Time Bank	-	-	-	2,596.16
PVN Dividend - Restricted	-	-	-	25.44
Group Term Life >\$50,000	-	-	36.09	721.80
Flex Benefit Credits	-	-	180.76	3,615.20
Customer Svc Challenge B	-	-	-	500.00
Total			5,409.16	128,571.55

Paid Time Off	Eligible Amt
Time Bank Bal (Hrs)	152.00

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	171.35	3,740.54

Messages
NonExempt PTO Balance Reflect Time Reported Through 09/28/01

Taxes		
Federal Income Tax	724.48	16,499.70
Social Security (FICA)	-	4,984.80
Federal Medicare	75.26	1,799.01
California Income Tax	349.90	7,231.75
California State Disability	-	416.94
Total	1,149.64	30,932.20

Pre-Tax Deductions		
401(k) Salary Deferral	-	10,500.00
Medical Plan	151.26	3,025.20
Dental Plan	35.07	701.40
Vision Plan	8.46	169.20
Life Insurance Plan	12.60	252.00
Accidental Death & Dismmbrment	1.73	34.60
Health Care FSA	9.61	192.20
Dependent Care FSA	-	101.52
Total	218.73	14,976.12

After-Tax Deductions		
401(K) Loan #1	196.77	393.54
Taxable 401(k)	-	2,015.00
PVN Dividend - Restricted	-	25.44
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	180.00
Dependent Life	0.85	17.00
Short-Term Disability Plan	9.13	182.60
Group Term Life > \$50,000	36.09	721.80

Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

ProBusiness

Employee	Id		Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR	013033		557-82-9558	Single	US- 18/0	CA- 18/0	0311459
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	10/06/01	10/19/01	10/19/01

Earnings	Rate	Units	Current	Year To Date	Paid Time Off	Eligible Amt
Salary	-	-	5,192.31	105,923.12	Time Bank Bal (Hrs)	152.00
Mgmt Incentive Plan Awar	-	-	-	9,003.35		
Stock Ownership Plan Mat	-	-	-	8,263.40		
Time Bank - Planned	-	-	-	2,596.16		
Time Bank - Unplanned	-	-	-	519.23		
Time Bank	-	-	-	2,596.16		
PVN Dividend -Restricted	-	-	12.72	38.16		
Group Term Life >\$50,000	-	-	36.09	757.89		
Flex Benefit Credits	-	-	180.76	3,795.96		
Customer Svc Challenge B	-	-	-	500.00		
Total			5,421.88	133,993.43		

**Memo Entries** Current Year To Date  
401(k) Plan - Employer Match 171.34 3,911.88

**Messages**  
NonExempt PTO Balance Reflect Time  
Reported Through 10/12/01

**Taxes**

Federal Income Tax	727.97	17,227.67
Social Security (FICA)	-	4,984.80
Federal Medicare	75.27	1,874.28
California Income Tax	350.66	7,582.41
California State Disability	-	416.94
Total	1,153.90	32,086.10

**Pre-Tax Deductions**

401(k) Salary Deferral	-	10,500.00
Medical Plan	151.26	3,176.46
Dental Plan	35.07	736.47
Vision Plan	8.46	177.66
Life Insurance Plan	12.60	264.60
Accidental Death & Dismbrment	1.73	36.33
Health Care FSA	9.61	201.81
Dependent Care FSA	-	101.52
Total	218.73	15,194.85

**After-Tax Deductions**

401(K) Loan #1	196.77	590.31
Taxable 401(k)	-	2,015.00
PVN Dividend -Restricted	12.72	38.16
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	189.00
Dependent Life	0.85	17.85
Short-Term Disability Plan	9.13	191.73
Group Term Life > \$50,000	36.09	757.89

**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee	Id		Social Security	Status	Exemptions/Allowances		Number
ANITA B. CARR	013033		557-82-9558	Single	US- 18/0	CA- 18/0	0314832
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	10/20/01	11/02/01	11/02/01

Earnings	Rate	Units	Current	Year To Date	Paid Time Off	Eligible Amt
Salary	-	-	5,192.31	111,115.43	Time Bank Bal (Hrs)	152.00
Mgmt Incentive Plan Awar	-	-	-	9,003.35		
Stock Ownership Plan Mat	-	-	-	8,263.40		
Time Bank - Planned	-	-	-	2,596.16		
Time Bank - Unplanned	-	-	-	519.23		
Time Bank	-	-	-	2,596.16		
PVN Dividend -Restricted	-	-	-	38.16		
Group Term Life >\$50,000	-	-	36.09	793.98		
Flex Benefit Credits	-	-	180.76	3,976.72		
Customer Svc Challenge B	-	-	-	500.00		
Total			5,409.16	139,402.59		

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	171.35	4,083.23

Messages	NonExempt PTO Balance Reflect Time Reported Through 10/26/01
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**Taxes**

Federal Income Tax	724.48	17,952.15
Social Security (FICA)	-	4,984.80
Federal Medicare	75.26	1,949.54
California Income Tax	349.90	7,932.31
California State Disability	-	416.94
Total	1,149.64	33,235.74

**Pre-Tax Deductions**

401(k) Salary Deferral	-	10,500.00
Medical Plan	151.26	3,327.72
Dental Plan	35.07	771.54
Vision Plan	8.46	186.12
Life Insurance Plan	12.60	277.20
Accidental Death & Dismmbrment	1.73	38.06
Health Care FSA	9.61	211.42
Dependent Care FSA	-	101.52
Total	218.73	15,413.58

**After-Tax Deductions**

401(K) Loan #1	196.77	787.08
Taxable 401(k)	-	2,015.00
PVN Dividend -Restricted	-	38.16
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	198.00
Dependent Life	0.85	18.70
Short-Term Disability Plan	9.13	200.86
Group Term Life > \$50,000	36.09	793.98

**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee	Id	Social Security	Status	Exemptions/Allowances	Number		
ANITA B. CARR	013033	557-82-9558	Single	US- 18/0 CA- 18/0	0318267		
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	11/03/01	11/16/01	11/16/01

Earnings	Rate	Units	Current	Year To Date
Salary	-	-	5,192.31	116,307.74
Mgmt Incentive Plan Awar	-	-	-	9,003.35
Stock Ownership Plan Mat	-	-	-	8,263.40
Time Bank - Planned	-	-	-	2,596.16
Time Bank - Unplanned	-	-	-	519.23
Time Bank - Termination	-	-	-	2,596.16
PVN Dividend -Restricted	-	-	-	38.16
Group Term Life >\$50,000	-	-	36.09	830.07
Flex Benefit Credits	-	-	180.76	4,157.48
Customer Svc Challenge B	-	-	-	500.00
Total	-	-	5,409.16	144,811.75

Paid Time Off	Eligible Amt
Time Bank Bal (Hrs)	152.00

Memo Entries	Current	Year To Date
401(k) Plan - Employer Match	171.34	4,254.57

Messages	NonExempt PTO Balance Reflect Time Reported Through 11/09/01
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Taxes		
Federal Income Tax	724.48	18,676.63
Social Security (FICA)	-	4,984.80
Federal Medicare	75.26	2,024.80
California Income Tax	349.90	8,282.21
California State Disability	-	416.94
Total	1,149.64	34,385.38

Pre-Tax Deductions		
401(k) Salary Deferral	-	10,500.00
Medical Plan	151.26	3,478.98
Dental Plan	35.07	806.61
Vision Plan	8.46	194.58
Life Insurance Plan	12.60	289.80
Accidental Death & Dismmbrment	1.73	39.79
Health Care FSA	9.61	221.03
Dependent Care FSA	-	101.52
Total	218.73	15,632.31

After-Tax Deductions		
401(K) Loan #1	196.77	983.85
Taxable 401(k)	-	2,015.00
PVN Dividend -Restricted	-	38.16
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	207.00
Dependent Life	0.85	19.55
Short-Term Disability Plan	9.13	209.99
Group Term Life > \$50,000	36.09	830.07

**Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757**

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

**ProBusiness**

Employee	Id	Social Security	Status	Exemptions/Allowances		Number	
ANITA B. CARR	013033	557-82-9558	Single	US- 18/0	CA- 18/0	1043047	
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
PNBC	1	0008	100203	10/19/98	11/17/01	11/30/01	11/27/01

Earnings	Rate	Units	Current	Year To Date	Memo Entries	Current	Year To Date
Salary	64.9039	64.00	4,153.85	120,461.59	401(k) Plan - Employer Match	137.08	4,391.65
Mgmt Incentive Plan Award	-	-	-	9,003.35			
Stock Ownership Plan Match	-	-	-	8,263.40			
Time Bank - Planned	-	-	-	2,596.16			
Time Bank - Unplanned	-	-	-	519.23			
Time Bank - Termination	-	-	-	2,596.16			
PVN Dividend - Restricted	-	-	-	38.16			
Group Term Life >\$50,000	-	-	36.09	866.16			
Flex Benefit Credits	-	-	180.76	4,338.24			
Customer Svc Challenge Bonus	-	-	-	500.00			
Total			4,370.70	149,182.45			

Taxes	Current	Year To Date
Federal Income Tax	421.46	19,098.09
Social Security (FICA)	-	4,984.80
Federal Medicare	60.20	2,085.00
California Income Tax	253.32	8,535.53
California State Disability	-	416.94
Total	734.98	35,120.36

Pre-Tax Deductions	Current	Year To Date
401(k) Salary Deferral	-	10,500.00
Medical Plan	151.26	3,630.24
Dental Plan	35.07	841.68
Vision Plan	8.46	203.04
Life Insurance Plan	12.60	302.40
Accidental Death & Dismemberment	1.73	41.52
Health Care FSA	9.61	230.64
Dependent Care FSA	-	101.52
Total	218.73	15,851.04

After-Tax Deductions	Current	Year To Date
401(K) Loan #1	196.77	1,180.62
Taxable 401(k)	-	2,015.00
PVN Dividend - Restricted	-	38.16
SOP Shares Delivered	-	8,263.40
Long-Term Disability After Tax	9.00	216.00
Dependent Life	0.85	20.40
Short-Term Disability Plan	9.13	219.12
Group Term Life > \$50,000	36.09	866.16
Total	251.84	12,810.86

Paycheck Questions? Call the Payroll Hotline at 1-800-679-4757

Providian Bancorp Services - 201 Mission Street San Francisco, CA 94105

ProBusiness

# **Exhibit 4**

## SECTION 2 - DEFINITIONS

In this section Liberty defines some basic terms needed to understand this policy. The male pronoun whenever used in this policy includes the female.

"Active Employment" means the Employee must be actively at work for the Sponsor:

1. on a full-time basis and paid regular earnings;
2. for at least the minimum number of hours shown in the Schedule of Benefits; and either perform such work:
  - a. at the Sponsor's usual place of business; or
  - b. at a location to which the Sponsor's business requires the Employee to travel.

An Employee will be considered actively at work if he was actually at work on the day immediately preceding:

1. a weekend (except where one or both of these days are scheduled days of work);
2. holidays (except when such holiday is a scheduled work day);
3. paid vacations;
4. any non-scheduled work day;
5. an excused leave of absence (except medical leave for the Covered Person's own disabling condition and lay-off); and
6. an emergency leave of absence (except emergency medical leave for the Covered Person's own disabling condition).

"Administrative Office" means Liberty Life Assurance Company of Boston, 100 Liberty Way, Dover, New Hampshire 03820.

"Annual Enrollment Period" or "Enrollment Period" means the period before each policy anniversary so designated by the Sponsor and Liberty during which an Employee may enroll for coverage under this policy.

"Application" is the document designated Section 9, it is attached to and is made a part of this policy.

Applicable to Employees hired prior to the first working day of the calendar year

"Basic Weekly Earnings" or "Basic Monthly Earnings" or "Pre-Disability Earnings" means the Covered Person's annual earnings as of the first working day of the calendar year, immediately prior to the date Disability or Partial Disability begins, divided by 12 for monthly and 52 for weekly. However, such earnings will not include bonuses, commissions, overtime pay and extra compensation.

Applicable to Employees hired after the first working day of the calendar year

"Basic Weekly Earnings" or "Basic Monthly Earnings" or "Pre-Disability Earnings" means the Covered Person's annual earnings as of their eligibility date, divided by 12 for monthly and 52 for weekly. However, such earnings will not include bonuses, commissions, overtime pay and extra compensation.

"Covered Person" means an Employee insured under this policy.



# **Exhibit 5**

## SECTION 6 - TERMINATION PROVISIONS

### Termination of Covered Person's Insurance

A Covered Person will cease to be insured on the earliest of the following dates:

1. the date this policy terminates, but without prejudice to any claim originating prior to the time of termination;
2. the date the Covered Person is no longer in an eligible class;
3. the date the Covered Person's class is no longer included for insurance;
4. the last day for which any required Employee contribution has been made;
5. the date employment terminates. Cessation of Active Employment will be deemed termination of employment, except the insurance will be continued for an Employee absent due to Disability during:
  - a. the Elimination Period; and
  - b. the period during which premium is being waived.
6. the date the Covered Person ceases active work due to a labor dispute, including any strike, work slowdown, or lockout.

Liberty reserves the right to review and terminate all classes insured under this policy if any class(es) cease(s) to be covered.

### Lay-off or Leave of Absence

The Sponsor may continue the Covered Person's coverage(s) by paying the required premiums, if the Covered Person is:

1. temporarily laid off; or
2. given leave of absence.

The Covered Person's coverage will not continue beyond the end of the policy month in which the lay-off or leave of absence begins. In continuing such coverage under this provision, the Sponsor agrees to treat all Covered Persons equally.

# **Exhibit 6**



March 14, 2005

Via Regular Mail

Steven P. Krafchick  
Krafchick Law Firm  
2701 First Avenue, Suite 340  
Seattle, WA 98121-1123

Re: Request for Documents Related to Anita Carr

Dear Mr. Krafchick:

Thank you for your letter dated February 28, 2005 in which you requested documents related to Anita Carr. Providian has previously produced the requested employee-specific documents to Ms. Carr and, after receiving a signed authorization from Ms. Carr, to Liberty Mutual. Moreover, on August 25, 2004, Providian forwarded to your associate Ms. Scott plan-specific documents. As such, Providian has already produced these documents.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D'Anne L. Gleicher", written over a horizontal line.

D'Anne L. Gleicher  
Legal Counsel

DLG/jj

